SOONG AH CHOW & ANOR.

v.

LAI KOK CHENG

FEDERAL COURT, KUALA LUMPUR
SALLEH ABAS CJ (MALAYA)
HASHIM YEOP SANI FJ
SYED AGIL BARAKBAH FJ
[CIVIL APPEAL NO. 211 OF 1983]
11 FEBRUARY 1984

LANDLORD AND TENANT: *Tenancy created by lease - Expiry by effluxion of time - Position of tenants - Whether they were trespassers - Holding over of premises - Certificate of Decontrol and notice to quit served on tenants - Claim for vacant possession and double rental.*

This appeal is against the order of the trial Judge directing the appellants to render vacant possession of premises No. 11, Singapore Street, Seremban and also against further order that the appellants to pay double rent with effect from 1 August 1979, the date on which the appellants were held to be trespassers.

By a lease dated 9 October 1961 a tenancy was created between the landlord of the said premises and the appellants for a term of 18 years from 1 August 1961. The said lease expired by effluxion of time on 31 July 1979. Subsequent tenders of rental by the appellants were refused by the respondent and the appellants were asked to vacate the premises. On 3 November 1981 the landlord obtained a Certificate of Decontrol and served copies of it to the appellants on 24 November 1981 and 26 November 1981. A notice to quit was also served on the appellants on 26 November 1981.

The grounds of appeal were two questions of law, namely whether the trial Judge was correct in holding that the appellants were trespassers from 1 August 1979 onwards and secondly whether the trial Judge was correct in ordering double rent from that date.

Held:

[1] There has been no tenancy existing between the appellants and the respondent after the expiry of the lease on 31 July 1979 and there is no protection afforded by the Control of Rent Act 1966 to the appellants after the expiry date.

[2] Since the trial Judge had found the appellants to be trespassers from 1 August 1979, the order to impose double rental from that date, was correctly made.

[Appeal dismissed with costs.]

Cases referred to:

Crook v. Whitbread [1919] 88 LJRKB 959
United India Fire & General Insurance Co. Ltd. v. Jaffnese Co-operative Society Ltd. [1971] 1 MLJ 118
Low Kum Yoon v. Teh Kim Huah [1979] 1 MLJ 83
Krishna Sreedhara Panicka v. Chiam Soh Yong Realty Co. Ltd. [1983] 1 MLJ 65

Legislation referred to:

Control of Rent Act 1966, ss. 16, (1), 23, (1)(a), (2)
Civil Law Act 1956, s. 28(4)(a)

For the appellants - James Ponniah; M/s. Stanley Ponniah, Ng & Soo
For the respondent - Atma Singh Gill; M/s. Gill & Tang

JUDGMENT

Hashim Yeop Sani FJ:

The appeal was originally on many grounds against the order of the trial Judge directing the appellants to render vacant possession of premises No. 11, Singapore Street, Seremban and also against the further order that the appellants to pay double rents from 1 August 1979, i.e. the date that the trial Judge held the appellants to be trespassers. At the commencement of the hearing of the appeal however Counsel for appellant, Mr. James Ponniah, abandoned grounds 1-4 inclusive in the memorandum of appeal which had put into issue not only the purported protection conferred on the appellants by the Control of Rent Act 1966 after the expiry of the lease by effluxion of time but also the legality of the Decontrol Certificate issued under s. 23 of the 1966 Act. The remaining grounds of appeal have thus been considerably simplified and the issues accordingly reduced to two questions of law, namely whether the trial Judge was correct in holding that the appellants were trespassers from 1 August 1979 onwards and secondly whether the trial Judge was correct in ordering the payment of double rent from that date.

The bare facts relevant for our present purpose may be summarised as follows. By a lease executed on 3 October 1961 between the landlord of the premises (respondent now) and the appellants a tenancy was created for a term of 18 years from 1 August 1961 at a yearly rental of RM1,800 payable at a rate of RM150 per mensem. The said lease expired by effluxion of time on 31 July 1979. As from 1 August 1979 all tenders of rentals by the appellants were consistently refused by the respondent and the appellants were asked to vacate the premises. On 3 November 1981 the landlord obtained a Certificate of Decontrol under s. 23(1)(a) of the Control of Rent Act 1966 and served copies of the Certificate to the appellants on 24 November 1981 and 26 November 1981. On 26 November 1981 the landlord also served a notice to quit to the appellants.

It does not seem to be disputed that the appellants were holding over but in what capacity is the crucial question. They claimed to be holding over under s. 16 of the 1966 Act. They also claimed that since the Decontrol Certificate was served on them on 26 November 1981 double rents should commence only from that date and not from 1 August 1979, that is after the date the lease expired.

According to s. 23(1)(a) of the Act where the tenancy of any controlled premises being a tenancy for a fixed period has been terminated by effluxion of time the landlord may apply to the Tribunal for the Decontrol Certificate and upon issue of such certificate a copy thereof shall be served on the tenant. Section 23(2) provides further that upon the service on the tenant of a copy of the Decontrol Certificate, the premises concerned shall forthwith cease to be controlled premises and any person holding over after such cessation shall cease to enjoy the benefits and protection which he would otherwise have enjoyed under the Act but for such cessation.

It is implied under s. 23 (1)(a) that a tenancy exists even after the lapse of the lease by effluxion of time. In other words there is an intention of both parties to continue with some form of tenancy upon the expiry of the lease. This construction is fortified by the use of the word "tenant" in subsection (2) of s. 23 of the Act and the definition of "tenant" in s. 2 of the Act; "tenant" means the tenant of a premises **in respect of which a tenancy exists**.

The appellants relied on the purported protection of s. 16 of the Act. If we examine the provisions of s. 16 of the Act we would see that the essence of the protection contemplated by these provisions is that so long as the tenant continued to pay the agreed rent and to perform the other conditions of the tenancy he should not be turned out of occupation. See also *Crook v. Whitbread* [1919] 88 LJRKB 959. A common denominator in all these provisions would seem to be that a tenancy **exists** and specified breaches or specified circumstances had occurred in any of those forms specified in paragraphs (a)-(m) inclusive of subsection (1) of s. 16 of the Act. Thus *United India Fire & General Insurance Co. Ltd. v. Jaffnese Co-operative Society Ltd* [1971] 1 MLJ 118 should be read in its proper context. In our view, that case merely emphasises the abolition of "statutory tenancies" by the Control of Rent Act 1966 and that a tenant can now hold over only by virtue of s. 16(1) of the Act.

In short the gist of contention canvassed by the appellants is simply as follows. Even though the Control of Rent Act 1966 has done away with statutory tenancies the Act still protects tenants in the situation of the appellants. In our view however the protection under the 1966 Act against eviction of a tenant is contained in the provisions of s. 16 of the Act; and the protection against unfair increase of rental is contained in ss. 4-11 inclusive of the Act. The Act confers no other protection to the tenant.

The crux of the issue is what is the position of the appellants when the lease expired after 31 July 1979. Because of the consistent refusal of the landlord to accept any rental from 1 August 1979 no tenancy was created between the parties as from that date. The position in law in similar situations is well expressed by the late Arulanandom J in *Low Kum Yoon v. Teh Kim Huah* [1979] 1 MLJ 83 where at page 85 the learned Judge said:

> As his tenancy has been determined by effluxion of time, the tenant has no right to a notice to quit, as there is no tenancy to determine, unlike the statutory tenant under the 1948 and 1956 Control of Rent Ordinances who was deemed to hold over the tenancy with certain rights as a tenant including a right to a notice determining the tenancy.

In other words there has been no tenancy existing between the appellants and the respondent after 31 July 1979 in respect of the premises; and there is no protection afforded by the 1966 Act to the appellants after 31 July 1979.

Section 28(4)(a) of the Civil Law Act 1956 provides that every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double rental until possession is given up by him. The effect of s. 28(4)(a) was examined in *Krishna Sreedhara Panicka v. Chiam Soh Yang Realty Co. Ltd.* [1983] 1 MLJ 65. The majority judgment held the view that the Court has discretion when to impose double rent. It seems to me that the legislature's choice of the words "shall be chargeable" clearly implies some discretion. But a more difficult question is the extent of the discretion. In *Panicka's* case the trial Judge had found that the parties had come to some sort of understanding and considered it to be unconscionable for respondents to claim double rent from the expiry of the notice. The majority judgment saw no reason to interfere with the exercise of this discretion. In the present case since the trial Judge had found the appellants to be trespassers from 1 August 1979 the order to impose double rental from that date was correctly made.

The appeal is accordingly dismissed with costs.

Also found at [1984] 1 CLJ 152